

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STRAIGHTSHOT)
COMMUNICATIONS INC., a) CASE NO. C10-268Z
Washington corporation,)
Plaintiff,) ORDER
v.)
TELEKENEX, INC., a Delaware)
corporation, et al.,)
Defendants.)
_____)
TELEKENEX, INC., a Delaware)
Corporation,)
Third-Party Plaintiff,)
v.)
STRAIGHTSHOT RC, LLC, a Delaware)
limited liability company; et al.,)
Third-Party Defendants.)
_____)

01 THIS MATTER comes before the Court on the Motion to Dismiss, docket
02 no. 85, filed by Plaintiff Straightshot RC, L.L.C.'s ("SRC"). Having reviewed
03 the parties' briefing, the Court enters the following Order.

04 **I. Discussion**

05 SRC moves to dismiss Defendant Mammoth Networks, L.L.C.'s
06 ("Mammoth") counterclaim and third-party complaint for debt recharacterization
07 (fourth cause of action), arguing that it is not a cognizable claim for relief outside
08 of bankruptcy. SRC also moves to strike the following affirmative defenses in
09 Mammoth's answer as unsupported by any facts: (1) estoppel/waiver (third
10 affirmative defense); (2) failure to mitigate damages (fourth affirmative defense);
11 and (3) failure to protect information (fifth affirmative defense).

13 **A. SRC's Motion to Dismiss Mammoth's Debt Recharacterization
14 Claims**

15 Dismissal under Fed. R. Civ. P. 12(b)(6) for failure to state a claim is proper
16 where the complaint fails to state a cognizable legal theory or fails to allege sufficient
17 facts to state a plausible claim for relief. Schroyer v. New Cingular Wireless Servs.,
18 Inc., 622 F.3d 1035, 1041 (9th Cir. 2009). SRC argues that Mammoth's cause of action
19 for "debt recharacterization" is not a cognizable claim for relief in a federal case.

20 Mammoth cites to a number of bankruptcy court opinions holding that, under
21 section 105 of the bankruptcy code (11 U.S.C. § 105(a)), a bankruptcy court has the
22 equitable authority to adjudicate a claim for debt recharacterization. See In re

01 Autostyle Plastics, Inc., 269 F.3d 726, 748 (6th Cir. 2001); In re Official Comm. of
02 Unsecured Creditors for Dornier Aviation (North America), Inc., 453 F.3d 225, 233 (4th
03 Cir. 2006). In the Ninth Circuit, however, bankruptcy courts do not have the power to
04 adjudicate a claim for debt recharacterization. In re Pacific Express, Inc., 69 B.R. 112,
05 115 (B.A.P. 9th Cir. 1986).

06 Mammoth argues that although In re Pacific Express precludes bankruptcy courts
07 in the Ninth Circuit from adjudicating claims for debt recharacterization, it does not
08 preclude this Court from hearing such a claim because this Court has broader equitable
09 powers than a bankruptcy court. In support of this contention, Mammoth relies heavily
10 on a non-bankruptcy district court case from the Eastern District of New York, where
11 the court held that the plaintiff could pursue a claim for debt recharacterization. Gasser
12 v. Infanti Int'l, Inc., 2008 WL 2876531, *8 n.7 (E.D.N.Y. 2008). The court in that case
13 adopted the cause of action from the bankruptcy context without discussion or analysis.
14 Id. The Court declines to follow the Gasser decision, and concludes that federal law
15 does not provide for a cause of action for debt recharacterization. Arena Dev. Grp.,
16 L.L.C. v. Naegel Commc'ns, Inc., 2007 WL 2506431, *7 (D. Minn. 2007)
17 (“Declaratory relief for recharacterization of debt to equity and equitable subordination
18 are not cognizable causes of action in federal district court.”); Englewood Lending, Inc.
19 v. G&G Coachella Invs., L.L.C., 651 F. Supp. 2d 1141, 1146 (C.D. Cal. 2009)
20 (“Borrowers’ authorities show recharacterization is a tool bankruptcy courts use when
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01 deciding the priority to give certain claims. They do not show it is a claim parties can
02 assert against each other under . . . federal law independent of bankruptcy
03 proceedings.”); see also Rubbermaid Inc. v. Robert Bosch Tool Corp., 2010 WL
04 3834410 (C.D. Ill. 2010).

05 In the alternative, Mammoth argues that debt recharacterization is a cognizable
06 claim for relief under Washington state law. There appear to be some states that
07 provide a common law cause of action for debt recharacterization. See James M.
08 Wilton & Stephen Moeller-Sally, Debt Recharacterization under State Law, 62 Bus.
09 Law. 1257, 1268 (2007) (citing Massachusetts and Wisconsin cases recognizing debt
10 recharacterization as a defense to the enforceability of insider loans). Although the
11 Court directed Mammoth to submit supplemental briefing on the viability of a debt
12 recharacterization claim under Washington law, see Minutes, docket no. 129, Mammoth
13 failed to provide any authority in support of such a claim. Instead, Mammoth urges the
14 Court to adopt the standard for debt recharacterization claims applied in Massachusetts
15 and Wisconsin. The Court declines to create a new cause of action that is unsupported
16 by Washington law. Mammoth’s debt recharacterization cause of action is not
17 cognizable under federal law or Washington state law.
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19 **B. SRC’s Motion to Strike Mammoth’s Affirmative Defenses**

20 A court may strike from a pleading an “insufficient defense or any redundant,
21 immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). A defense is
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01 insufficient if it is unsupported by any facts that would entitle the defendant to relief.
02 Qarbon.com, Inc. v. eHelp Corp., 315 F. Supp. 2d 1046, 1049 (N.D. Cal. 2004). A
03 reference to a legal doctrine, standing alone, is insufficient notice. Id. If the Court
04 chooses to strike a defense, leave to amend should be freely given so long as there is no
05 prejudice to the opposing party. Wyshak v. City Nat'l Bank, 607 F.2d at 824, 826 (9th
06 Cir. 1979).

07 SRC argues that the Court must strike Mammoth's affirmative defenses of
08 waiver/estoppel, failure to mitigate damages, and failure to protect information because
09 Mammoth has not pled any facts to support these defenses. The Court agrees that
10 Mammoth's answer only raises these defenses in conclusory fashion, without
11 referencing any particular facts. See Answer, docket no. 78 at 10. Mammoth's
12 answer fails to plead sufficient facts to give SRC fair notice of the defenses.

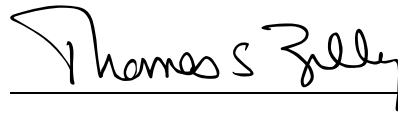
14 **II. Conclusion**

15 The Court GRANTS SRC's motion to dismiss, docket no. 85. Mammoth's
16 fourth cause of action for debt recharacterization is DISMISSED with prejudice. The
17 Court further GRANTS SRC's motion to strike, docket no. 85, and STRIKES
18 Mammoth's third, fourth, and fifth affirmative defenses without prejudice. Mammoth
19 has requested leave to amend as to these affirmative defenses, and the Court concludes
20 that SRC will not be prejudiced by an amendment. The Court GRANTS Mammoth's
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01 request for leave to file an amended answer as to these defenses. Mammoth shall file
02 any amended answer no later than December 13, 2010.

03 IT IS SO ORDERED.

04 Filed and entered this 19th day of November, 2010.

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07 Thomas S. Zilly
08 United States District Judge
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